

**BOARD OF APPEALS**  
**for**  
**MONTGOMERY COUNTY**  
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[www.montgomerycountymd.gov/mc/council/board.html](http://www.montgomerycountymd.gov/mc/council/board.html)

**Case No. S-2567**

**PETITION OF GREGORY LEVINE AND KURI YASUNO**

OPINION OF THE BOARD

(Public Hearing Date: July 16, 2003)

(Effective Date of Opinion: September 12, 2003)

Case No. S-2567 is an application for a special exception pursuant to Section 59-G-2.00 (Accessory Apartment) of the Zoning Ordinance to permit an accessory apartment.

The Board of Appeals held a public hearing on the application on July 16, 2003. Gregory Levine and Kuri Yasuno appeared in support of the application. Jerri Burgess, Housing Code Inspector, Department of Housing and Community Affairs (DHCA) also testified.

The Board received two letters of opposition to the application.

Decision of the Board:                      Special Exception **Granted**, subject  
to conditions enumerated below.

**EVIDENCE PRESENTED**

1. Gregory Levine and Kuri Yasun, a married couple and owners of the subject property, seek permission for the continued use of an existing accessory apartment. The subject property is Lot 31, Block 2, Sumner Subdivision, located at 5625 Overlea Road, Bethesda, Maryland 20816 in the R-60 Zone.

2. DHCA Housing Code Inspector Jerri Burgess inspected the subject property and submitted a report of the inspection into the record [Exhibit No. 18]. Ms. Burgess testified that the apartment was previously a Registered Living Unit and has been in existence at least since 1994. Her report states that based upon the provisions of the Montgomery County Housing Code and upon the apartment's 260 square feet of habitable area, it is suitable for occupancy by two

unrelated persons or a family of not more than two persons. She stated that there are two off-street parking spaces available and plenty of on-street parking, and submitted photographs of the available parking at 8:20 a.m. on June 24, 2003 [Exhibit No. 21]. Ms. Burgess testified that in a neighborhood defined by Massachusetts Avenue, Fort Sumner Drive, Nahant Street, Cleaves Lane, and Marlyn Drive, there are three other approved accessory apartments. Mr. Levine and Ms. Yasuno stated that they will correct all of the conditions noted in Ms. Burgess's inspection report.

3. Maryland National Capital Park and Planning Commission (MNCPPC) staff analyzed the application and recommend approval [Exhibit No. 19]. Staff finds that the application is consistent with the Bethesda Chevy Chase Master Plan (1990) which supports special exception uses "that contribute to the housing objectives in the Master Plan". Staff also notes that the Master Plan "endorses expanding a variety of housing types by provision of accessory apartments". Staff states that accessory apartments are a good source of affordable housing. Staff, having found only one other approved special exception in the neighborhood, finds that approval of the instant accessory apartment application will not result in an excessive concentration of similar uses.

Staff finds that the entrance to the accessory apartment, located at the side of the house and partially screened by landscaping, preserves the single-family appearance of the house. Staff observed ample parking on Overlea Road at 2:30 p.m. on a weekday, and finds that the proposal will have no adverse effect on the transportation network or on pedestrian or vehicular safety.

Staff finds that the application meets all of the development standards for the R-60 Zone, and all of the general and specific standards for accessory apartments, including the requirement that the apartment not exceed 1200 square feet and that it be subordinate to the main dwelling.

4. The accessory apartment is located in the basement of the home and has a separate entrance at the side of the house [Exhibit Nos. 3, 11 and 16(c)].

5. Mr. Levine and Ms. Yasuno live in the main house [Exhibit No. 3].

6. The lot size is 7,200 square feet. [Exhibit No. 3].

7. The house was built in 1952. Mr. Levine and Ms. Yasuno have owned the subject property since December 19, 2000 [Exhibit No. 3].

8. No exterior modifications are proposed.

9. The accessory apartment has the same address as the main house. [Exhibit No. 3].

10. The accessory apartment contains a kitchen, bath and living/sleeping area. [Exhibit No. 16(c)].

11. Two off-street parking spaces are available, and both DHCA and MNCPPC staff found adequate on-street parking is also available. [Exhibit Nos. 3, 21, 18, 19].

12. Mr. Levine and Ms. Yasuno affirmed that they will receive compensation for only one dwelling unit. [Exhibit No. 3].

## **FINDINGS OF THE BOARD**

### *Sec. 59-G-1.2. Conditions for granting a special exception.*

*59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.*

The physical and operational characteristics necessarily associated with an accessory apartment include: the existence of the apartment as a separate entity from the main living unit, but sharing a party wall with the main unit; the provision within the apartment of the necessary facilities and spaces and floor area to qualify as a habitable space under the Building Code; provision of a separate entrance and walkway, and sufficient lighting; additional activity from that household, including more use of the outdoor space and more pedestrian and automobile traffic and parking activity; and the potential for additional noise from the additional household.

The accessory apartment in the instant application is subordinate to the main dwelling, has a well-screened separate entrance which maintains the single family appearance of the house, two off-street parking spaces, together with substantial on street parking.

The Board finds that none of the physical or operational characteristics of the proposed accessory apartment exceed what would be expected with the use. The Board finds that there will be no non-inherent adverse effects from this proposed accessory apartment.

**59-G-1.21. General Conditions.**

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Accessory apartments are permitted by special exception in the R-60 Zone.

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

As discussed more fully below, the proposed accessory apartment so complies.

(3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Board adopts MNCPPC staff's finding that the accessory apartment is consistent with the Bethesda Chevy Chase Master plan which supports the zoning for the subject property and which supports a variety of housing types for the planning area.

(4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

No new structures are proposed, and the accessory apartment fully maintains the single family character of the home. Two off-street and ample on-street parking spaces are available, no adverse traffic impacts are anticipated. The Board finds therefore, that both visually and operationally, the accessory apartment will be in harmony with the general character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds, given the ample parking, screened apartment entrance, and limitation on occupancy of the accessory apartment, that it will have little visual or operational impact on surrounding properties or the general neighborhood, and will not be detrimental to their use, peaceful enjoyment, economic value or development.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Occupancy of the apartment is limited to two individuals. No activity associated with this purely residential use will entail any of the listed objectionable effects.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendation of a master or sector plan do not alter the nature of an area.*

The Board adopts staff's finding that there will be no overconcentration of special exception uses in the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds that this low impact residential use will not involve any activity resulting in these adverse effects.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer public roads, storm drainage and other public facilities.*

- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*

The subject property is served by public facilities, the adequacy of which was determined at the time of subdivision review.

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

The Board adopts technical staff's finding that there will be no adverse effect on either pedestrian or vehicular safety.

## **SPECIFIC STANDARDS**

### **Sec. 59-G-2.00. Accessory apartment.**

*A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:*

#### **(a) Dwelling unit requirements:**

- (1) *Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Only one accessory apartment is proposed.

- (2) *The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*

Located in a portion of the basement of the home, the accessory apartment shares at least one party wall in common with the house.

- (i) *The lot is 2 acres or more in size; and*
- (ii) *The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Not applicable.

- (3) *An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

No exterior modifications are requested.

- (4) *The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

The house was built in 1952 and is therefore 51 years old.

- (5) *The accessory apartment must not be located on a lot:*

- (i) *That is occupied by a family of unrelated persons; or*
- (ii) *Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) *That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

In their statement, Mr. Levine and Ms. Yasuno affirm that none of the listed situations exists at the subject property. [Exhibit No. 3].

- (6) *Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

The Board finds that the side entrance to the accessory apartment, partially screened by existing landscaping, preserves the single family appearance of the dwelling.

- (7) *All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

No external modifications are proposed.

*(8) The accessory apartment must have the same street address (house number) as the main dwelling.*

The accessory apartment has the same address as the house.

*(9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.*

The Board adopts staff's finding that the accessory apartment contains less than 1200 square feet, and is subordinate to the main dwelling.

***(b) Ownership requirements:***

*(1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Mr. Levine and Ms. Yasuno reside in the main house.

*(2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the applicant, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Mr. Levine and Ms. Yasuno have owned the subject property since December of 2000.

*(3) Under no circumstances is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Mr. Levine and Ms. Yasuno have affirmed that they will receive compensation for only one dwelling unit.

*(4) For purposes of this section, "owner" means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the board.*

As evidenced by the deed they submitted into the record, Mr. Levine and Ms. Yasuno own the subject property.



- (5) The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Not applicable.

**(c) Land use requirements:**

- (1) The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

The lot size is 7200 square feet.

- (2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in an excessive concentration of similar uses in the general neighborhood of the proposed use (see also Section 59-G-1.21(a)(6) which concerns excessive concentration of special exceptions in general).*

With a maximum of three other special exceptions in the general neighborhood, the closest one 2.5 blocks away, the Board adopts staffs findings that there will be no excessive concentration of similar uses in the general neighborhood.

- (3) There shall be adequate water supply and sewage disposal systems to serve the occupants of both the accessory apartment and the main dwelling.*

The subject property is served by adequate public facilities.

- (4) Adequate parking shall be provided. There must be a minimum 2 off-street parking spaces, unless the Board makes either of the following findings:*

- (i) More spaces are required to supplement on-street parking; or*
- (ii) Adequate on-street parking permits fewer off-street spaces.*

*Off-street parking spaces may be in a driveway but otherwise shall not be located in the yard between the front of the house and the street right-of-way line.*

Two off-street parking spaces are available.

*(5) Accessory apartments shall not be detrimental to the use and peaceful enjoyment of surrounding properties or the general neighborhood, and shall cause no objectionable noise, traffic or other adverse impacts.*

The Board finds, given the ample parking, screened apartment entrance, and limitation on occupancy of the accessory apartment, that it will have little visual or operational impact on surrounding properties or the general neighborhood, and will not be detrimental to their use, peaceful enjoyment, economic value or development.

Therefore, based upon the foregoing, the Board grants the special exception, subject to the following conditions:

1. The applicants shall be bound by their testimony and exhibits of record, to the extent that such representations and evidence are identified in the Board's opinion granting the special exception, including, but not limited to Exhibits 3 and 16.

2. Pursuant to the provisions of the Montgomery County Housing Code and based upon its square footage, occupancy of the accessory apartment shall be limited to no more than two individuals.

3. The applicants shall complete all corrections noted in the DHCA inspection report.

On a motion by Allison Ishihara Fultz, seconded by Donna L. Barron, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement and Louise L. Mayer necessarily absent:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision in the above-entitled case.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 12<sup>th</sup> day of September, 2003.

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Katherine Freeman  
Executive Secretary to the Board

Note:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.